

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works Planning and Building County Counsel	(2) MEETING DATE 11/25/2014	(3) CONTACT/PHONE Mark Hutchinson, Deputy Director \ 805 781-5252 Kami Griffin, Assistant Director \ 805781-5708	
(4) SUBJECT Introduction of an amendment to the Health and Sanitation Ordinance, Title 8 of the San Luis Obispo County Code relating to regulation of the exportation of groundwater. Hearing date set for December 2, 2014. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board of Supervisors introduce the ordinance in Attachment 1 and direct the Clerk to set for public hearing and action on December 2, 2014.			
(6) FUNDING SOURCE(S) Current County Budget	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____) <input type="checkbox"/> Board Business (Time Est. ____)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input checked="" type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date: <u>9-9-14</u>	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa M. Howe			
(18) SUPERVISOR DISTRICT(S) All Districts			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Kami Griffin, Assistant Director
Public Works / Mark Hutchinson, Deputy Director
County Counsel / Erica Stuckey, Deputy County Counsel

VIA: Jim Bergman, Director Planning and Building
Dave Flynn, Acting Director Public Works
Rita Neal, County Counsel

DATE: 11/25/2014

SUBJECT: Introduction of an amendment to the Health and Sanitation Ordinance, Title 8 of the San Luis Obispo County Code relating to regulation of the exportation of groundwater. Hearing date set for December 2, 2014. All Districts.

RECOMMENDATION

It is recommended that the Board of Supervisors introduce the ordinance in Attachment 1 and direct the Clerk to set for public hearing and action on December 2, 2014.

DISCUSSION

On September 9, 2014, the Board provided direction to staff on the preparation of an ordinance regulating the exportation of groundwater. Since that time, staff prepared a draft ordinance (public review draft) and solicited public feedback on the ordinance, including referrals to the Water Resource Advisory Committee (WRAC), Agricultural Liaison Advisory Board (ALAB), Paso Robles Groundwater Basin Advisory Committee, Community Advisory Councils and others.

Attached is an ordinance regulating the exportation of groundwater underlying the County that was prepared based on the direction provided by your Board on September 9, 2014 with modifications based on comments received during public review.

This staff report summarizes the comments received and the modifications made to the public review draft and, where applicable, offers suggestions for additional modifications to the proposed ordinance in response to comments. The comments received are attached (Attachment 2).

Definitions – Section 8.95.20

Export

On September 9, 2014, your Board provided direction to draft an ordinance that would define “export” as the extraction of groundwater underlying the county for use outside county boundaries **or** for use outside of the groundwater basin from which it was extracted (referred to as the county- and basin-based definition). A number of comments were received from both private parties and purveyors to delete the county boundary limitation and to include a purely basin-based definition. Removal of the county boundary limitation would allow for transfers to occur outside of the county without the benefit of a permit where those transfers are within the same groundwater basin from which the groundwater is extracted. In

other words, such a change would allow for out-of-county transfers **within** the three groundwater basins that cross county lines, namely the Paso Robles Area Groundwater Basin, the Santa Maria River Valley Groundwater Basin and the Cuyama Valley Groundwater Basin. For example, groundwater could be extracted from a parcel overlying the Paso Robles Area Groundwater Basin within the county for use on a parcel overlying the Paso Robles Area Groundwater Basin within Monterey County without the benefit of a permit.

If your Board wants to consider this change, then under the definition of “Export”, the language “or for use outside of the county” would need to be deleted.

Groundwater

Staff received a number of comments related to the definition of groundwater and that only “native” groundwater be regulated by this ordinance. As part of the Board’s direction on September 9, 2014, the ordinance was not to differentiate between “native” and “non-native” groundwater. The proposed ordinance reflects this direction.

Historical Practice and Contiguous Parcels

Comments were received that asked for clarification on what was meant by “contiguous parcels” and “historical practice” as used in the ordinance in the exemption section. Definitions have been included in the proposed ordinance in order to make it clear when the exemptions would apply.

Local Water Agency

Comments were received asking that the ordinance clarify that all water purveyors be exempt from the ordinance. Staff has proposed a change in the ordinance being introduced today (from the public review draft) to the definition of “Local Water Agency” (formerly “Local Agency”) such that mutual water companies and private water companies regulated by the Public Utilities Commission, in addition to Community Services Districts and County Service Areas, would be exempt from the ordinance with respect to transfers within their boundaries or services areas.

Site

There were comments made regarding the definition of “Site” and the exemption for movement of groundwater between contiguous parcels “under common ownership” consistent with historical practice. The concern that was raised was that contiguous properties might be under the common control of a particular person (e.g. an agricultural lessee), but not under the same ownership. In order to address this, the proposed ordinance has been revised to additionally reference contiguous parcels having the same lessee or the same controlling entity within the definition of site as well as within the exemption.

Exemptions – Section 8.95.40

Contaminated Water

Comments were received about the exemption for contaminated water. There was confusion about the need to create this exemption and when it would be used as well as concern that it could potentially encompass a large number of exports and that “contaminated” groundwater would need to be defined in great detail. Based on the foregoing, the exemption was deleted from the ordinance that is before you today for introduction.

County Exemption

There were numerous comments received regarding the exemption for groundwater exports undertaken by the county or the San Luis Obispo County Flood Control and Water Conservation District or their contractors. On September 9, 2014, your Board directed that the ordinance contain an exemption for the county. Due to the confusion raised by the use of the term “or their contractors” and its potential breadth, that part of the exemption has been deleted from the proposed ordinance. However, the exemption for the county and the Flood Control District was not removed.

Prior to a county project occurring that would export groundwater from one basin to another or to a location outside of the county, the following process would occur.

The Public Works Department first prepares a Project Execution Plan that includes a Public Outreach Plan. The Public Outreach Plan is developed based on the size, complexity, and impact of the project. However, at a minimum, a Public Outreach Plan:

- Establishes a single point of contact within the Department
- Identifies the affected and/or interested public stakeholders
- Establishes the method(s) to be used to inform and seek information from all stakeholders
- Includes the necessary contacts with Advisory Committees, neighborhood groups, industry groups, etc.
- Identifies the location and timing for public meetings and hearings

In addition to the Public Outreach Plan, all Public Works Projects are subject to environmental review under CEQA, as well as other State and Federal environmental regulatory processes. The majority of these regulatory processes include a public information and comment component. At a minimum, all CEQA documents prepared for Public Works Projects are reviewed and approved by the Board of Supervisors at a regularly scheduled Board hearing, after all required public notice requirements have been met.

As this process provides for extensive public notice and input, it would not be necessary to have county projects also go through the provisions of this ordinance. If your Board would like to consider modifying the exemption, a provision could be added that would require the Board to make the same findings that are set forth in the proposed ordinance (Section 8.92.070) as part of its decision to fund and approve any county export project.

De Minimis Exports

Your Board's direction included an exemption for exportation of not more than one-half acre foot per year. Staff received comments that included the amount was too small, the amount was too large, that any amount was not appropriate, and that enforcement of this provision was going to be difficult as the exportation would be exempt and therefore not tracked.

If your Board wanted to leave in this exemption, but create a way to track where and how much water was being exported from site to site, a provision could be added that would require an exporter that was moving less than one-half acre foot per year to file a de minimis exemption form. The form would be kept on file with the Public Works Department. The form could include such information as the location of the export site, the location of the import site and precisely how much water was going to be exported. If complaints about water exportation were received, the form would provide the County with information that the exportation was being done under an exemption from the ordinance and save investigation time.

If your Board wanted to remove this exemption but still wanted to include an exemption responsive to similar concerns, it could add an exemption for exports during periods of declared emergency where necessary to provide a domestic or public water supply.

Other Exemptions

Comments were received about not allowing any exportation from basins that have been certified as a Level of Severity III under the County's Resource Management System or conversely that the ordinance should only apply to those basins and not to other basins in the county. In addition, comments regarding the applicability of the ordinance to adjudicated basins were received.

If your Board wanted to consider adding an exemption for adjudicated basins, you could consider an exemption for exports from or within the areas adjudicated in *Santa Maria Valley Water Conservation District v. City of Santa Maria, et al.* (Lead Case No. CV 770214) as long as the exports were completed in accordance with the procedures set forth in the Stipulation dated June 30, 2005. Except upon further order of the court, the stipulation prohibits all Stipulating Parties from transporting groundwater outside of the basin except for those uses in existence as of the effective date of the stipulation. In addition, the

stipulation prohibits transport of any groundwater produced within the Northern Cities Management Area outside of the Northern Cities Management Area without the agreement of each of the Northern Cities (Arroyo Grande, Pismo Beach, Grover Beach and Oceano). Thus, a mechanism already exists for the management of exports from the basin.

Permit Procedures – Sections 8.95.50 and 8.95.60

Public Works Director

There were comments received about who should be delegated the authority to make export permit decisions, including the idea of forming a new decision-making authority that would make these decisions. Your Board agreed with the information provided at your September 9, 2014 meeting, that the Public Works Director, after a process that included public notice and the ability to receive input, would be the appropriate decision-making authority. The Public Works Department has staff with specialized water expertise and is in the best position to appropriately and adequately review applications and make decisions. Your Board also agreed that the ordinance would include the ability to appeal the Public Works Director's decision to your Board.

Referral Process

The public review draft ordinance set forth the referral process after the Public Works Director receives an application for an export permit. A number of the comments received discussed this process and felt that it should be broader. In response to those comments, the proposed ordinance for introduction today expands who would get a referral and where notice of a new application would be posted. Notice of receipt of an application would be required to be posted on the Public Works Department's website and at the end of the Board's agenda (in a manner similar to how environmental determinations are posted on the Board's agenda now). The application would be sent to applicable public agencies, the Water Resource Advisory Committee, as well as any relevant Board-authorized advisory groups, such as the local Community Advisory Council and the Paso Robles Groundwater Basin Advisory Committee. Also, any interested person can request that all applications be sent directly to them.

Review Process

There were numerous comments about the process that would be used to review and approve or deny a request for an export permit.

Public Hearing Notice

The public review draft, as well as the ordinance to be introduced today, both require notice of the hearing to include mailed notice to all owners of property within a one mile radius of the exterior boundaries of the site from which the export is to occur. Comments were received that the radius for notification should be 2 to 5 miles, that all property owners within the affected basin be notified and that property owners should receive notice of all new applications in addition to the hearing notice. The requirement for posting new applications on the Department's website, as well as on the Board's agenda should provide adequate notice of application submittal to neighboring property owners. However, staff did feel that the standard 300 foot radius notification of a hearing was not adequate and that a one mile radius was a better standard, but that a 2 to 5 mile radius or all property owners in the basin was not justified.

Public Hearing

The ordinance includes provisions for a public hearing that mirror those found in the Land Use and Coastal Zone Land Use Ordinances for a Minor Use Permit (MUP). At your September 9, 2014 meeting, your Board provided direction that a public hearing process be created that was similar to the simplest land use hearing. Using the provisions as set forth in the ordinance would provide the opportunity for a public hearing where one was requested. The timing on when a request would need to be made is the same as the process used for MUP as is the process by which a hearing is conducted. However, in response to comments received, the specificity of how the hearing was to be conducted was removed from the draft ordinance to be introduced today.

Sunset Clause – Section 8.95.180

There were comments about a mandatory yearly review of the ordinance by the Board of Supervisors. At your September 9, 2014 meeting, direction was provided that a clause be written that would expire the ordinance five years from the date of its adoption unless specifically extended by the Board of Supervisors. This has been included in the proposed ordinance for introduction.

OTHER AGENCY INVOLVEMENT/IMPACT

The amendments were referred to applicable agencies and community advisory groups. This proposed ordinance has been approved by County Counsel as to form and legal effect.

FINANCIAL CONSIDERATIONS

Cost of developing the proposed ordinance was covered by the current County budget.

RESULTS

Introduction of these amendments today will allow them to be heard on December 2, 2014 and become effective 30 days later.

ATTACHMENTS

1. Proposed Ordinance for introduction
2. Comments Received